

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

WAFAQI MOHTASIB SECRETARIAT, ISLAMABAD and others---Petitioners

Versus

SNGPL, LAHORE and others---Respondents

Civil Petition No. 205-L of 2017, decided on 11th August, 2020.

(On appeal from the order of Lahore High Court, Lahore dated 13.12.2016, passed in W.P. No.36461 of 2016)

Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order (I of 1983)---

---Art. 9---Federal Ombudsmen Institutional Reforms Act (XIV of 2013), S. 10---Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003, Regln. 2(m)---Wafaqi Mohtasib (Ombudsman) and Wafaqi Mohtasib's Secretariat---Legal status and powers---Wafaqi Mohtasib's Secretariat was not a legal entity, and did not enjoy any legal status or the power to sue or be sued under the law---Furthermore the Ombudsman, being a creature of the statute, could not challenge the powers vested in him by the legislature, however, the parties to the proceedings may bring such a challenge---Ombudsman by law and by design was not empowered to defend its decisions before a higher forum by becoming a party to the proceedings---Ombudsman had no locus standi to challenge an order passed by the constitutional court that interpreted its jurisdiction or powers under the law.

Wafaqi Mohtasib's Secretariat gave its findings in the present matter and recommended respondent (Sui Northern Gas Pipeline Ltd.) to reconsider the matter by adopting proper procedure and take disciplinary action against its delinquent officers, etc. Respondent challenged said Recommendations of the Ombudsman before the High Court and vide the impugned order the High Court held that the disputes pertaining to detection bills on allegations of meter tampering fell within the exclusive jurisdiction of the Oil and Gas Regulatory Authority ("OGRA") and Ombudsman had no jurisdiction over such like matters.

Wafaqi Mohtasib's Secretariat/petitioner (not the Ombudsman) filed present petition for leave to appeal before the Supreme Court with the prayer that order of the High Court be set aside. The alleged grievance of the petitioner, arose from the curtailment of the jurisdiction and powers of the Ombudsman in matters pertaining to gas detection bills and meter tampering. Primary questions in the present case were whether Wafaqi Mohtasib's Secretariat (or for that matter even the Ombudsman) could maintain the present petition for leave to appeal by challenging the order of the High Court whereby the jurisdiction and powers of the Ombudsman under the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983 ("Order I of 1983") read with the Federal Ombudsman Institutional Reforms Act, 2013 ("Act") had been interpreted and determined; as to how was the Wafaqi Mohtasib's Secretariat or the Wafaqi Mohtasib (Ombudsman) aggrieved by the impugned order; and more importantly, could the Ombudsman and his Secretariat be aggrieved of an order which interpreted and determined the jurisdiction and powers of the Wafaqi Mohtasib under the Order of 1983 and the Act.

Perusal of Order of 1983 revealed that Wafaqi Mohtasib's Secretariat was not a legal entity, infact it was not a defined term under said Order, and did not enjoy any legal status or the power to sue or be sued under the law. Wafaqi Mohtasib's Secretariat was at best an administrative term and referred to the establishment of the offices of the Ombudsman under Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003. The filing of the present petition by the Wafaqi Mohtasib's Secretariat was, therefore, hopelessly misconceived as it had no locus standi to maintain the instant petition.

Assuming, for the sake of argument, that the present petition was filed by the Ombudsman. Still the question arose, whether the Ombudsman was an aggrieved person in the present matter. The answer to such question required an understanding of the distinction between the two roles enjoyed by the

Ombudsman under Order I of 1983. One was personal, that related to the terms and conditions of service of the Ombudsman; while the other was the neutral quasi-judicial institutional role (or statutory) of the Ombudsman to "redress and rectify" mal-administration. In the first case the Ombudsman could be (personally) aggrieved regarding any order that affected his terms and conditions of service under Order of 1983, as that would be affecting his rights to service under the law. However, in the second case, the Ombudsman, could not be said to be aggrieved, if the powers to redress mal-administration vested in him under the law were modified (enhanced or curtailed) by the Parliament or through interpretation of the constitutional court. Challenging the powers would be challenging the law and intent of the Parliament. Ombudsman, being a creature of the statute, could not challenge the powers vested in him by the legislature, however, the parties to the proceedings may bring such a challenge. The powers enjoyed by the Ombudsman could not be confused with his rights under the law.

A neutral quasi-judicial adjudicatory forum created under a statute could not become a party to the proceedings brought before it. Such a forum was simply to redress mal-administration by exercising its powers under the law. The Ombudsman by law and by design was not empowered to defend its decisions before a higher forum by becoming a party to the proceedings. This would totally tarnish its neutrality.

Even the Ombudsman had no locus standi to challenge an order passed by the constitutional court that interpreted its jurisdiction or powers under the law. Therefore, the present petition filed by the Wafaqi Mohtasib's Secretariat was hopelessly misconceived, not maintainable and passed for frivolous litigation resulting in wasting the time of the court. Petition for leave to appeal was dismissed with costs of Rs.100,000/- [p. 591] E & F

Hafiz Ahsaan Ahmad Khokhar, Advocate Supreme Court, Imtiaz A. Shaukat, Advocate-on-Record and M. Usman Arif, D.A.G. for Petitioners.

Umar Sharif, Advocate Supreme Court for Respondent No.1.

Date of hearing: 11th August, 2020.

ORDER

SYED MANSOOR ALI SHAH, J.---Brief facts of the case are that Respondent No.2, an industrial gas consumer, approached the Wafaqi Mohtasib (Ombudsman) to complain about the excessive gas billing by Sui Northern Gas Pipeline Ltd. (SNGPL), Respondent No.1 and the "mal-administration" at the hands of its officials. In the "Findings Recommendations" issued by Wafaqi Mohtasib's Secretariat dated 28.10.2014 the complaint of Respondent No.2 against Respondent No.1 was rejected finding no maladministration on the part of Respondent No. 1. Thereafter, the Respondent No.2 filed a review and in its "Revised Findings" and "Final Recommendations for Implementation" issued by the Wafaqi Mohtasib's Secretariat on 26.02.2016, Respondent No.1 was recommended to reconsider the matter by adopting proper procedure and take disciplinary action against the delinquent officers, etc. Respondent No.1 challenged these Recommendations of the Ombudsman before the High Court and vide impugned order dated 13.12.2016 the High Court¹ held that the disputes pertaining to detection bills on allegations of meter tampering fell within the exclusive jurisdiction of the Oil and Gas Regulatory Authority ("OGRA") under the Oil and Gas Regulatory Authority Ordinance, 2002 ("Ordinance") and Ombudsman had no jurisdiction over such like matters. The writ petition was decided through the impugned order in favour of Respondent No.1 on 13.12.2016 and the said order, as per the learned counsel for the parties has not been challenged before this Court by the parties.

2. The petitioner before us is the Wafaqi Mohtasib's Secretariat (not the Ombudsman) with the prayer that order of the High Court be set aside. The alleged grievance of the petitioner, as disclosed in the petition, arises from the curtailment of the jurisdiction and powers of the Ombudsman in matters pertaining to gas detection bills and meter tampering which fall under the OGRA Ordinance. Without going into the merits of the case or commenting upon the merits of the impugned judgment, the primary

question before us is whether Wafaqi Mohtasib's Secretariat (or for that matter even the Ombudsman) could maintain the instant petition by challenging the order of the High Court whereby the jurisdiction and powers of the Ombudsman under the Establishment of the office of the Wafaqi Mohtasib (Ombudsman) Order, 1983 ("Order, 1983") read with the Federal Ombudsmen Institutional Reforms Act, 2013 ("Act") have been interpreted and determined. How is the Wafaqi Mohtasib's Secretariat or the Wafaqi Mohtasib (Ombudsman) aggrieved by the impugned order? And more importantly, can the Ombudsman and his secretariat be aggrieved of an order which interprets and determines the jurisdiction and powers of the Wafaqi Mohtasib under the Order and the Act?

3. Perusal of Order, 1983 reveals that Wafaqi Mohtasib's Secretariat is not a legal entity, infact it is not a defined term under Order, 1983² and does not enjoy any legal status or the power to sue or be sued under the law. Wafaqi Mohtasib's Secretariat is at best an administrative term and refers to the establishment of the offices of the Ombudsman under Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003. The filing of the instant petition by the Wafaqi Mohtasib's Secretariat is, therefore, hopelessly misconceived as it has no locus standi to maintain the instant petition.

4. Assuming, for the sake of argument, that the petition was filed by the Ombudsman, as he was arrayed as a respondent in the writ petition. Still the question arises, whether the Ombudsman is an aggrieved person in the instant matter? The answer to this question requires an understanding of the distinction between the two roles enjoyed by the Ombudsman under Order, 1983. One is personal, that relates to the terms and conditions of service of the Ombudsman; while the other is the neutral quasi-judicial institutional role (or statutory) of the Ombudsman to "redress and rectify" mal-administration. In the first case the Ombudsman can be (personally) aggrieved regarding any order that affects his terms and conditions of service under Order, 1983, as that would be affecting his rights to service under the law. However, in the second case, the Ombudsman, cannot be said to be aggrieved, if the powers to redress mal-administration vested in him under the law are modified (enhanced or curtailed) by the Parliament or through interpretation of the constitutional court. Challenging the powers would be challenging the law and intent of the Parliament. Ombudsman, being a creature of the statute, cannot challenge the powers vested in him by the legislature, however, the parties to the proceedings may bring such a challenge. The powers enjoyed by the Ombudsman cannot be confused with his rights under the law.

5. Another way to look at it is that a neutral quasi judicial adjudicatory forum created under a statute cannot become a party to the proceedings brought before it. Such a forum is to simply to redress mal-administration by exercising its powers under the law. The Ombudsman by law and by design is not empowered to defend its decisions before a higher forum by becoming a party to the proceedings. This would totally tarnish its neutrality.

6. For the above reasons, even the Ombudsman has no locus standi to challenge an order passed by the constitutional court that interprets its jurisdiction or powers under the law. Therefore, the instant petition filed by the Wafaqi Mohtasib's Secretariat is hopelessly misconceived and not maintainable.

7. The filing of this petition by the Wafaqi Mohtasib's Secretariat through its Secretary has left us concerned and disturbed. We, therefore, direct the Ombudsman to hold an inquiry into the matter and submit a report to this Court within two months from today as to who had authorized the filing of the instant petition and the action taken against the concerned officials.

8. This hopelessly misconceived petition passes for frivolous litigation and has resulted in wasting the time of the court. Therefore, this petition is dismissed with costs of Rs.100,000/- imposed under Order XXVIII, Rule 3 of the Supreme Court Rules, 1980. The costs shall be deposited with any approved, recognized and well-known Charitable Organization and receipt thereof be submitted with the Deputy Registrar of this Court (Lahore Registry) within two months from today. In case of failure to comply with the directions in this paragraph or paragraph 7 (above), the office shall fix this petition

before the Court for necessary orders. Leave is, therefore, declined and this petition stands dismissed with costs.

MWA/W-3/SC Petition dismissed.